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6. Criminal Law (§ 1153 (3)*)—Introduction of Testimony after Opening Address in Discretion of Court.—That, after the attorney for commonwealth had concluded his opening address to the jury, in prosecution for violation of law against fishing with nets in Rockbridge county, the court permitted him to introduce records of the board of supervisors, showing adoption of said law, held not to warrant reversal, in view of rule that time and order of introduction of evidence rests largely in the discretion of the trial court.

Error to Circuit Court, Rockbridge County.

S. H. Burks and others were convicted and fined by a justice of the peace, under separate warrants charging them with a violation of the fish and game laws of the state. Upon appeal to the circuit court all the cases were by agreement tried together, and the defendants were again found guilty, and they bring error. Affirmed.

H. S. Rucker, of Buena Vista, and *Hugh A. White*, of Lexington, for plaintiffs in error.

The Attorney General, for the Commonwealth.

BOWEN *v.* COMMONWEALTH.

Nov. 20, 1919.

[101 S. E. 232.]

1. Domicile (§§ 1, 8*)—Necessity of Domicile.—Every person must have a domicile, and but one; and this domicile, whether it be of origin or choice, is presumed to continue until a new one is obtained.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 113.]

2. Domicile (§ 4 (2)*)—Intent in Change of Domicile.—In order to acquire a new domicile, there must be a union of intention and residence, the new domicile not being acquired until there is not only an abandonment of the old residence, but a fixed intention to establish a new residence, followed by execution of the intent.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 113, 114.]

3. Domicile (§ 10*)—Intent to Be Inferred from Declarations and Conduct.—Intent, as regards domicile, is to be inferred from declarations and from conduct, and evidence of expressed intent has no controlling weight if such intent is inconsistent with the acts and general conduct of the person, in which case the acts and conduct showing intent outweigh his declarations or expressions of intent.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 113, 116.]

4. Taxation (§ 254*)—Residence of Taxpayer.—Where owner in 1905 purchased a farm in Virginia, spent a large part of his fortune in buying and improving farm, moved his furniture, which had there-

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

tofore for some years back been in storage, upon farm, and since 1907 had spent the greater portion of each year on farm, with no physical residence in city in which he had previously lived, except as transient at hotel or apartment house, and where he had paid capitation tax in such county for some years and reported income for taxation there, and while out of state had made out federal income tax return as resident of Virginia for 10 years prior to 1915, he was a resident of this state in 1915 within tax laws

Error to Circuit Court, Clarke County.

Petition by George A. Bowen against the Commonwealth for exoneration from payment of taxes assessed against him. Petition dismissed, and petitioner brings error. Affirmed.

McLanahan, Burton & Culberson, of Washington, D. C., and *Conrad Kownslar*, of Berryville, for plaintiff in error.

The Attorney General, W. T. Lewis, of Berryville, and *Oscar L. Shewmake*, of Richmond, for the Commonwealth.

E. H. PARRISH & CO. v. PULLEY.

Nov. 20, 1919.

[101 S. E. 236.]

1. Trial (§ 156 (3)*)—Construction of Evidence on Demurrer Thereto.—Where several inferences may be drawn from the evidence differing in degree of probability on a demurrer to the evidence, the court must adopt those most favorable to the demurree, unless they are strained, forced, or contrary to reason.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 524; 16 Va.-W. Va. Enc. Dig. 407.]

2. Master and Servant (§ 278 (12)*)—Sufficiency of Showing of Negligence of Master on Demurrer to Evidence.—In an employee's action for injuries by the slipping of a guy rope supporting a derrick, evidence held to require a finding that defendants were negligent in securing such rope to a crowbar set into the ground with the small end up.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 680, 725, 726.]

3. Master and Servant (§ 185 (1)*)—Character of Servant as Fellow Servant or Vice Principal.—A servant may in the performance of one act be a fellow servant and in the performance of another be a vice principal.

[Ed. Note.—For other cases, see 6 Va.-W. Va. Enc. Dig. 8.]

4. Master and Servant (§ 185 (11)*)—Negligence of Fellow Servant in Preparing Appliance Negligence of Master.—The master's duty in fastening a guy rope supporting a derrick is not assignable,

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.